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## **How does the law put an analogy to work?:**

### **Discerning ‘a condition analogous to that of a slave’ in contemporary Brazil**

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In the early years of the twenty-first century, Brazil took the lead in concerted legal efforts to identify and prosecute contemporary cases of slave labor. At a conceptual level, the campaign has invoked the constitutional protection of human dignity as a foundation for an expansive definition of what is formally termed in Article 149 of the Criminal Code the “reduction of a person to a condition analogous to that of a slave.” At the operational level, mobile teams of inspectors and prosecutors have intervened in thousands of work sites, and prosecutors have obtained hundreds of consent agreements and convictions in the labor courts, a civil branch of the judiciary. Between the mid-1990s and the end of 2015, some 49,000 workers were

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administratively *resgatados* (“rescued”) from rural and urban workplaces in which inspectors determined that they had been reduced to a condition analogous to slavery. Under the supervision of the inspectors, their labor contracts were administratively cancelled, their back pay was (if possible) extracted from the employer, and unemployment insurance payments were provided to them.<sup>2</sup>

But how do inspectors, and later prosecutors, translate into practice the abstract concept of a modern analogy to an ancient institution? This essay tries to tackle that question, aiming to see how practitioners close the gap between the moral opprobrium (and normative judgment) associated with the strong term “slave labor” and the everyday circumstances found on individual work sites.

The Brazilian government compiles total statistics on the number of inspections, the number of workers rescued, and the infractions cited. Building on these, scholars have in recent years published impressive studies of the regional distribution of conditions identified as slave labor and the correlates of their incidence.<sup>3</sup> The unequal regional allocation of resources, the intrusion of politics in individual states, and the idiosyncrasies of specific inspection groups

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<sup>2</sup> Two recent overviews are Ricardo Rezende Figueira, Adonia Antunes Prado, and Horácio Aruntune de Sant’Ana Júnior, organizers, *Trabalho escravo contemporâneo: um debate transdisciplinar* (Rio de Janeiro: Mauad Editora, 2011); and Ricardo Rezende Figueira, Adonia Antunes Prado, Edna Maria Galvão, *Privação de liberdade ou atentado à dignidade: escravidão contemporânea* (Rio de Janeiro: Mauad Editora, 2013). Overall data on recent actions in the labor courts, but lacking specifics on the charges, are available at: [http://www.cnj.jus.br/programas-e-acoas/pj-justica-em-numeros?acm=33412\\_7423](http://www.cnj.jus.br/programas-e-acoas/pj-justica-em-numeros?acm=33412_7423)

<sup>3</sup> See Hervé Théry, Neli Aparecida de Mello, Julio Hato, Eduardo Paulon Girardi, *Atlas do trabalho escravo no Brasil* (São Paulo: Amigos da Terra, 2009) at <http://amazonia.org.br/wp-content/uploads/2012/05/Atlas-do-Trabalho-Escravo.pdf>

nonetheless make it unlikely that aggregate data can fully reveal the analytic processes in which the inspectors have been engaged as they decide whether the conditions they observe should be characterized as “slave labor.”

The individual case files compiled by inspectors and prosecutors, by contrast, open up for examination the specific conditions that have led them to draw the analogy with slavery. The incorporation of the concept of “human dignity,” in the context of the claim that slave labor can be seen and named by rigorous professionals, has helped to signal the ethical importance of the campaign. The sheer volume of this evidence, moreover, conveys the seriousness of Brazil’s engagement with the problem.<sup>4</sup>

We might begin with a seemingly classic example. On July 25, 2008, a worker on a coffee farm operated by Juciel Dias Correa in the state of Minas Gerais sought to leave the farm but was blocked from retrieving his belongings from the barracks. He reported the incident to an official of the Union of Rural Workers in a nearby town. A union representative accompanied the worker back to the farm, but was himself attacked by the coffee farmer. (The employer later claimed to have mistaken the union representative for a thief.) The union then contacted the Ministry of Labor and Employment.<sup>5</sup>

A “mobile team” of three labor inspectors, one labor prosecutor, and two police officers

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<sup>4</sup> These are archived in what is now designated the Ministry of Labor and Social Security.

<sup>5</sup> See “Relatório de Fiscalização. Juciel Dias Correa - Sítio Bom Jesus,” archived as Op. 71/2008, in the Digitized Archives of the Division for Inspection and Eradication of Slave Labor (DADESL), Ministry of Labor and Social Security (MLSS), Brazil. See the full “Note on sources” following the Appendix to this paper.

was assembled, and traveled to the farm the next day. When they arrived, the employer told them that he did not know whether the workers were still on the farm. Searching the area, the team found two groups of workers in rough barracks. Inspectors learned that they had migrated from the state of Bahia looking for work, were unregistered as employees of the farm, were not accorded any of the required days of rest, and had not been paid regularly. The inspectors then took formal depositions and photographed the conditions of the barracks, in particular noting the lack of hygienic facilities, the storage of “agrotoxics” in the kitchen area, the poor condition of the accommodations, and the lack of adequate beds.

The team concluded that there was an immediate risk to the health and safety of the workers, and ordered the barracks condemned and the workers removed from the farm. The workers—16 in all—were lodged in a hotel in town while preparations were made for their (unwritten) work contracts to be formally cancelled, with the payment of wages due. Two days later the employer alleged that he did not have enough money to pay the workers. After negotiation, an arrangement was made for the employer to provide each worker with a portion of the calculated back pay; workers also received the designated unemployment payments due from the state, to help them bridge over to their next job.

In the final written report, the workers were said by the inspectors to be laboring in a condition “analogous to that of a slave.” The employer was not offering them the basic elements required by an employment relation, and he subjected them to “degrading conditions,” lodging them in a setting inappropriate for human habitation, failing to enter the terms of employment on each worker’s labor booklet as required by law, failing to register them for labor benefits,

retaining their wages, and failing to provide them with the required days of rest. Constraint could be seen in the threats made against the worker who had tried to quit, and in the failure to pay wages regularly, such that anyone who did leave would lose payment for weeks of work.

Reading the file, one senses that this employer had done just about everything that might predispose the inspectors and prosecutors to want to see him punished. Not only did he provide execrable conditions of lodging and retaliate against the worker who had initially sought to leave, but he physically attacked the union rep, lied to the inspectors, and came up short when he was called upon to pay the wages due.

This inspection led to a rare criminal trial and conviction for a violation of Article 149 of the Brazilian Penal Code, alongside the more common civil proceeding in the labor courts.<sup>6</sup> The fact pattern and the legal denouement in the case of Juciel Dias Correa thus occupy one end of a spectrum of cases. Correa was a nearly cinematic bad guy, a poor renter rather than a large owner, and himself perennially short of cash. Inspectors could denounce him, prosecutors could throw the book at him, and a local judge could convict him—all apparently without facing political consequences.

When faced with powerful landowners or corporations, however, officials have often had to be more circumspect. To defend a diagnosis of a “condition analogous to that of a slave” they need to build up a chain of evidence and interpretation if they wish to link the observed conditions to the normative—and powerfully stigmatizing—conclusion. Thus to understand the legal concept

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<sup>6</sup> Information on the outcome of the criminal trial that followed is not in the case file, but has been provided upon inquiry by one of the authors to the Federal Judiciary in Belo Horizonte.

of an analogy with slavery requires tracing the intermediate steps that leave their traces in the prose and photographs contained in the official *relatórios*.

The issue of characterizing some labor relations as *trabalho escravo*, slave labor, has become politically volatile in Brazil. Hoping to strengthen the hand of the state when confronted with employers who might simply factor into the costs of production any risk of discovery and possibility of fines, activists long sought the passage of a constitutional amendment that would raise the penalties by mandating expropriation (without compensation) of land on which slave labor was employed. In June of 2014, the amendment passed the Congress, though with a crucial provision that a full *Regulamento* governing its enforcement, developed in dialogue with all stakeholders, would soon follow.<sup>7</sup>

Pushback from large landowners, both in the regulatory drafting process and in the form of new proposed statutory language, was not long in coming. Taking their cue from an earlier dissent filed by Supreme Court Justice Gilmar Mendes, conservative representatives argued that the specific provisions of the relevant article of the Brazilian Penal Code, as amended in 2003, which have also served indirectly as guidelines for the labor prosecutors and labor courts, are subjective and inappropriate. In Mendes's view, "supposed degrading conditions" should not be taken as evidence of reduction to a condition analogous to that of a slave unless there has been a direct

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<sup>7</sup> The parallel is to an earlier amendment requiring expropriation of land on which illegal drugs, specifically marijuana, have been cultivated. Given the operation of the prior amendment, it is not clear that it is actually legally necessary for the regulations to be in place before the new amendment can be enforced, but prosecutors and members of the legislature have been acting as though this were the case. See the discussion in Leonardo Barbosa, "Behind the Definition of Contemporary Slavery in Brazil: Concepts of Freedom, Dignity, and Constitutional Rights," forthcoming (in translation) in *Brésil(s)* (Paris).

blocking of the workers' capacity to leave the work site.<sup>8</sup> (Indeed, conservative legislators have introduced a proposal that would remove the phrases that refer to the act of subjecting workers to “degrading labor” or “debilitating workdays” from the specification of elements of the offense of reducing workers to a condition analogous to slavery.<sup>9</sup>)

Article 149 of the Brazilian Penal Code currently defines it as a crime “to *reduce* a person to a condition analogous to that of a slave” either by *subjecting* him/her to forced labor or debilitating workdays; by *subjecting* him/her to degrading working conditions; or by *restricting*, by any means, his or her movement by reason of debt contracted with the employer or his/her agent” (emphasis added). The verbs used—*reduzir*, *submeter*, *sujeitar*, and *restringir*—do indeed imply intent and constraint. This is not the same thing as insisting that for a finding of labor in conditions analogous to slavery the worker must be shown to be unable to leave the workplace.

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<sup>8</sup>“Se for dada à vítima a liberdade de abandonar o trabalho, rejeitar as condições supostamente degradantes, não é razoável pensar em crime de redução à condição análoga ao trabalho escravo.” See the voto-vista of Gilmar Mendes in Brazil. Supremo Tribunal Federal. Inquérito n. 2131. 23/02/2012, beginning on p. 46.

<sup>9</sup> The specific target of the proposal is the definition to be used in any expropriation proceedings initiated under the recent constitutional amendment. But a dramatic narrowing of the definition of slave labor in these proceedings could have a chilling effect on prosecutors in both the labor and the criminal courts. As of October, 2015, Senate Bill 432/2013, passed by the Joint Committee, is at:

<http://www.senado.leg.br/atividade/rotinas/materia/getPDF.asp?t=156295&tp=1>. Debate will continue in the Senate, and at least one state legislature (Minas Gerais) has formally petitioned the Senate to refrain from weakening the legislation, in order that there not be backsliding in the “social rights that are constitutionally guaranteed.” (“...prevenindo-se, assim, a ocorrência de retrocesso de direitos sociais garantidos constitucionalmente.”) Requerimento 1109/2015, addressed by the Deputy Sargento Rodrigues to Senhor Presidente da Assembleia Legislativa do Estado de Minas Gerais, 26 May 2015, forwarded by the President of the Assembleia to President of the federal congress, and from there to the Comissão de Constituição, Justiça e Cidadania, on 10 July 2015.

But it does raise the question: what, beyond demonstrably bad working conditions, do inspectors look for when deciding whether or not such “subjection” has taken place?<sup>10</sup>

### **The archive**

The case files themselves constitute a rich contemporary archive, a vast body of inspection reports carried out by mobile teams, generally composed of *auditores-fiscais* (inspectors) from the Ministry of Labor and Employment, accompanied by prosecutors from the Ministério Público do Trabalho (the Public Ministry of Labor, an executive office independent of the regular judiciary whose task is to bring the civil cases to the labor courts). We have focused our attention Minas Gerais, a large and geographically varied state bordering on the northeastern state of Bahia. The files from Minas encompass urban and rural work sites, including sugar cane plantations and charcoal burning operations, two classic locales for the use of *trabalho escravo*.<sup>11</sup>

Inspectors from the Ministry of Labor and Employment identify specific infractions, issue citations (“Autos de infração”), impose fines, and, in urgent cases, authorize the cancellation of labor contracts on the spot and the removal of the workers from the work site. Labor prosecutors may choose to prosecute or to encourage consensual settlements. The coordinated campaign against slave labor, however, goes beyond the regulatory responsibilities that are the ordinary

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<sup>10</sup> Although in theory one could argue that some form of initial consent from a worker absolves the employer of the charge of “subjecting” workers to the subsequent conditions, this position has long been rejected in international law on slavery and human trafficking, and is refused by the Orientações from the Public Ministry of Labor cited in the Appendix to this paper.

<sup>11</sup> See the “Note on Sources,” below.



work of each of these actors. As many authors have noted, the national campaign against slave labor draws on a particular construct of human dignity. The term *dignity*, in turn, gives constitutional force and weight to what would otherwise be primarily a branch of labor law.<sup>12</sup>

Our reading of selected *relatórios* suggests that the concept of dignity has over time come to inform the terms in which inspectors themselves frame their reports. The imposition of conditions that threaten the safety and health of the worker, for example, can be presented as evidence that the worker has been treated “as a thing rather than as a person.” Added to this are the details of those threats to health and safety, which may include conditions equivalent to, or worse than, those of the farm animals on the same property: the provision only of dirty water from an animal trough, the insistence that workers sleep on the ground and relieve themselves in the fields, or the relegation of workers to a barracks in which they cannot even stand up.

Such conditions are framed by inspectors as more than simply evidence of an effort by employers to reduce costs, though they are also that. These “indignities” increase the workers’ vulnerability to a point of humiliation, which may make it more difficult for them to resist or object to the work expected of them. One journalistic account of such inspection visits quotes a worker as having blurted out to the inspectors, when describing the moldy bread provided as food,

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<sup>12</sup> See, for example, Leonardo Barbosa, “Behind the Definition of Contemporary Slavery in Brazil”; Rebecca J. Scott, “Dignité/Dignidade: Organizing Against Threats to Dignity in Societies After Slavery,” in *Understanding Human Dignity*, edited by C. McCrudden. Proceedings of the British Academy, 192. (Oxford: Oxford University Press, 2013); Livia Mendes Moreira Miraglia, *Trabalho escravo contemporâneo: conceituação à luz do princípio da dignidade da pessoa humana*. 2<sup>a</sup> ed. (São Paulo: LTr, 2015).

“A gente não é cachorro” (“We are not dogs”).<sup>13</sup> In an interview carried out by historians, another man phrased his appreciation for the original passage of labor laws in similar terms: “. . . antes de 1930, não tinha lei não. O povo, a gente era bicho.” (“. . . before 1930, there wasn’t any law. Ordinary people were [considered] animals.”)<sup>14</sup>

The inspectors’ double-consciousness, of the importance of recording the objective conditions of work and of interpreting the dignitary offense that may be contained within those conditions, gives the *relatórios* a particularly dramatic quality as evidence. The mobile teams generally respond to a credible initial report from a union, a journalist, or an individual by arranging surprise inspection visits, accompanied by members of the Federal Police. (Police protection has proven to be essential; in 2004, three inspectors and a driver on another assignment were assassinated in an ambush carried out in northeastern Minas Gerais.<sup>15</sup>) In addition to the literal arms of the Federal Police, the teams are also armed with still and video cameras, with

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<sup>13</sup> Klester Cavalcanti, *A dama da liberdade: A história de Marinalva Dantas, a mulher que libertou 2.354 trabalhadores escravos no Brasil, em pleno Século 21* (São Paulo: Benvirá, 2015), caption to photo selection at the end of the book.

<sup>14</sup> Cornélio Cancino, age 82, in an interview collected by Ana Rios and Hebe Mattos, and cited in Angela de Castro Gomes, coord., *Ministério do Trabalho: Uma história vivida e contada* (Rio de Janeiro: CPDOC, 2007), 100.

<sup>15</sup> For details on the ambush and the criminal trial in which the defendants were found guilty, see Tribunal Regional Federal da 1a Região, Justiça Federal de 1o grau em Minas Gerais, 9a Vara Criminal, Ação Penal n. 2004.38.00.036647-4, Judge Murilo Fernandes de Almeida, presiding. The decision is currently pending appeal before the Federal Regional Court for the First Circuit.

walkie talkies, with forms to fill out, and with Labor Cards to provide to unregistered workers.<sup>16</sup>

They try to arrive without warning and move quickly onto the property, with the police closing off exit routes, and sometimes cutting off communications between units of the enterprise. The inspectors work fast in order to identify conditions that may be deemed to be *in flagrante*, and to prevent the destruction of evidence. If they believe the conditions of labor to pose an immediate risk to health and safety, they can proceed directly to a *resgate*, a rescue, removing the workers from the workplace altogether and arranging their lodging in hotels nearby.<sup>17</sup>

After the initial administrative action on site, the labor prosecutor/s may propose a consent agreement, or take the case to trial in the labor courts (Justiça do Trabalho). Substantial monetary penalties can be imposed, including punitive amounts paid to the state for what are called “collective moral damages.” Once a formal prosecution in the labor courts has been initiated, private lawyers (or advocates from a law school legal clinic like the one recently established at the Federal University of Minas Gerais) can sue for additional damages for an individual client before those same labor courts. The two proceedings can go forward simultaneously.<sup>18</sup>

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<sup>16</sup> We are using the term Labor Card to refer to what is now called the Carteira de Trabalho e Previdência Social, a booklet-sized document issued by the Ministry of Labor and used to record an individual’s work history. Use of the Carteira is now obligatory for anyone employing a worker. See <http://www.mtps.gov.br/carteira-de-trabalho-e-previdencia-social-ctps>

<sup>17</sup> Several films and videos aim to capture this drama, including “Frente de trabalho,” “Aprisionados por Promessas - a escravidão contemporânea no campo brasileiro,” and “Correntes,” all of which are currently available for viewing on YouTube.

<sup>18</sup> In a small fraction of cases, federal criminal prosecutors have followed up with criminal trials. Convictions in the criminal trial courts, however, are rare. Even fewer cases have

**The diagnostic process: What constitutes “subjection to a condition analogous to that of a slave”?**

In inspections carried out in the 1990s (often focused on the Amazon region), armed guards, debt peonage, and explicit threats loomed large. An attempted murder of a fleeing worker was at the center of the 1994 case that led to a crucial 2003 settlement with the Interamerican Commission on Human Rights, marking a turning point in the development of Brazil’s national campaign against slave labor.<sup>19</sup> Direct evidence of such tactics, however, became less frequent in subsequent inspection reports—presumably a sign both of better enforcement, and of changing strategies by employers. Although threats were still found to be occurring at some work sites after 2005, recent reports tend to emphasize the role of fear, isolation, lack of information, withheld wages, and psychological pressure in keeping laborers at work in otherwise “degrading” conditions.<sup>20</sup>

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made it through the appeals process to a final criminal conviction. For most practical purposes a civil conviction in the labor courts will be the last step. For an overview of the situation, see Cristiano Paixão and Leonardo Barbosa, “Perspectives on Human Dignity. (On Judicial Rulings Regarding Contemporary Slavery in Brazil),” *Quaderni Fiorentini per la storia del pensiero giuridico moderno* 44 (2015): 1167 - 1184. Mariana Dias Paes, of the Law School of the University of São Paulo, is also carrying out detailed research on the history of appeals in cases in the federal criminal courts.

<sup>19</sup> Inter-American Commission on Human Rights. Report No. 95/03. Petition 11.289. Friendly Settlement. José Pereira. Brazil. October 24, 2003.

<sup>20</sup> The phenomenon of “unlawful subcontracting” has also become more conspicuous, showing some of the same characteristics of abusive working conditions, and sometimes

The 2008 operation titled “Fazenda Cachoeira do Bom Jardim,” also known as “Fazenda Cometa,” in which fifty-eight workers were eventually rescued from a coffee farm in western Minas Gerais, is illuminating in this respect. The operation was triggered by a denunciation conveyed to the regional branch of the Ministry of Labor by a former worker on the farm. He had reported that the workers, recruited from the states of Maranhão, Piauí, and Bahia, were toiling “without lodging” and that improper deductions had undercut the promised wage rate. He added that he experienced “difficulty leaving the farm.”<sup>21</sup>

This report suggests the ways in which multiple elements, added together, could be seen to imply the existence of *subjection*, itself a key element of the definition underlying the analogy. The first, and certainly the most frequent in the reports we have analyzed so far, is the geographical dislocation of the workers. In spite of the fact that a separate crime of “domestic human trafficking” [*aliciamento de trabalhadores de um local para outro do território nacional*] has been on the books since 1998, it is still very common to find workers being transported within the country illegally, that is, without following applicable regulations, and without providing workers with a means to return home if they seek to terminate the contract. Inspectors on Fazenda Cometa found that “several co-workers had attempted to abandon the worksite, and that one of them only succeeded after collecting small donations from his colleagues.” More than a thousand

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providing an alternative grounds for citation or prosecution. See the discussion below.

<sup>21</sup> “Relatório de Fiscalização. Fazenda Cometa,” archived as Op. 77/2008. DADESL/MLSS, Brazil.

miles separate the city of Patrocínio, where the farm was located, from the city of Imperatriz, in the countryside of one of the workers' home states, Maranhão, from which many workers have been recruited for this kind of highly demanding labor. The trip takes more than 24 hours by bus and the ticket is expensive. "Going back home" if the work turns out to be very different from what was expected is thus hardly an option for workers who may not yet have collected any pay.

Compounding the problem of the distance workers have already traveled is the extreme isolation of some of the work sites. The harder it is to reach the farm, the more exposed and vulnerable the workers become, because labor inspection—or indeed any kind of public authority oversight—is less likely. Fazenda Cometa is separated by 24 miles of paved road and 6 miles of dirt road from the city of Patrocínio, that is, a ten-hour walk, adding to the credibility of the inspectors' observation that those who sought to protest the conditions of labor on the farm faced difficulties in leaving the work site. The inspectors in this case acknowledged in their report that there was no direct surveillance of any kind over the workers. However, the circumstances of the farm made it unnecessary to keep armed guards at the gate. Geography itself largely accomplished that purpose.

The conduct of the employer at Fazenda Cometa—particularly through the withholding of personal documents—reinforced the circumstances hindering the workers' autonomy. The inspectors found 26 labor booklets in possession of the owner of the farm, in only one of which had the legally required annotations concerning the labor contract been made. The withholding of personal documents is specified in the 2003 update to Article 149 of the Brazilian Penal Code as

one of the indicia of labor in conditions analogous to slavery, precisely because when an employer takes control over these documents, he or she creates a substantial burden for the workers. Lack of access to one's personal labor registration card makes it harder for the worker to unilaterally terminate the contract if confronted with degrading labor conditions. To do so requires obtaining a new Labor Card, and without the proper annotations on the card, the worker has no proof of having actually worked for that employer. Even though a trained lawyer knows that these obstacles can be overcome if a claim is made before a labor court, a worker with little formal education is unlikely to be aware of that possibility. Moreover, the fact that the booklets of the workers from Bahia had already been collected in the hometown of the workers by the same employee in charge of running the farm's canteen suggests the recruiters' intent to use the documents as a sort of "collateral" for the initial debt contracted with the employer.

Debt itself, moreover, can play a crucial role in undermining the workers' autonomy. On Fazenda Cometa, the employee nicknamed "Bó" and the farm manager named Lázaro controlled the debt contracted with the canteen. Deductions of the assigned cost of the workers' meals from their wages were found to exceed the legally permissible threshold. In addition to selling food, the canteen also sold individual protection equipment (gloves for the harvesting of coffee, for instance), which, by law, should always be provided for the workers directly by the employer. Finally, the records of those debts were kept in the hands of the manager of the farm, such that workers did not have full access to their balance or control over how much they owed. Together, these circumstances could trigger a situation of debt bondage. In this case, however, the inspectors

did not claim that full debt bondage existed on this farm, despite evidence they produced that could serve as indicia of an impermissible “truck system.”

Debt of this kind can impose a strong moral component on the relationship of employer and employee. The withholding of the Labor Card, combined with a truck system operated through a “company store,” reinforces the moral coercion exercised over the workers. If they choose to abandon their job because they are unwilling to accept conditions of labor they consider humiliating, they know that the employer still has one of their personal documents in hand. They may well anticipate that he will track them down and intimidate them by attempting to collect the “pending debt.” The fear of humiliation before one’s own family can lead to the sense that only if the employer has acknowledged that they are now “even” is one fully released from a legal and moral obligation.<sup>22</sup>

In enumerating these factors, the inspectors depicted the situation of the workers they had rescued from Fazenda Cometa as one not just of deplorable physical conditions, but of subjection to degrading conditions of labor. While photographs appended to inspection reports can document the filth and the risk, it is when the dynamic of the relationship is fully described in this way that the necessary element of subjection becomes clear. Poverty and scarcity that might appear on the surface to resemble the workers’ own conditions of life in their place of origin take on a different

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<sup>22</sup> Ricardo Rezende Figueira’s analysis, in *Pisando fora da própria sombra: a escravidão por dívida no Brasil contemporâneo* (Rio de Janeiro: Civilização Brasileira, 2004), was pioneering in the analysis of the moral weight of debt.



meaning when they are accompanied by constraints on autonomy, magnifying vulnerabilities and compounding disappointment with humiliation and indignity.

An additional element emphasized in some of the reports is the imposition of direct risk to life and health. Many workers on Fazenda Cometa, for example, were found to have no access to individual protection equipment (some were harvesting coffee wearing socks and flip-flops instead of boots). Hygienic conditions were very poor (the actual ‘work front’ in the field offered no protection from sun and rain during mealtimes, and no portable toilets had been brought to the site). Food was transported, kept, and prepared under inappropriate conditions for those on the work fronts, which could be miles away from the place the workers were lodged. The shelters where the workers were lodged were often dirty, crowded, and in terrible shape. Crucially, there was in some cases no potable water available for the workers at the lodging facilities or at the work fronts.

Confronted with the totality of circumstances on the Fazenda Cometa, the inspection team concluded that:

the withholding of the Labor Cards of the majority of the workers for more than one month without any annotation whatsoever regarding the labor contract, combined with the debt contracted with the manager of the farm, Lázaro, and the employee who ran the canteen, Bó, and with the debilitating workdays and degrading conditions of the work sites and lodging facilities, amount to indicia that the employer has incurred in the violation provided for by Article 149 of the Brazilian Penal Code, the reduction of a person to a

condition analogous to that of a slave.

On Fazenda Cometa the imposition of risks that can be viewed as degrading helped to insure a finding of slave labor. On other work sites, however, inspectors held back from such a judgment. To identify the elements making up an operational definition of contemporary slavery as interpreted by the labor inspectors, it is thus useful to examine cases in which an inspection was carried out, but the inspectors concluded that the conditions in question did *not* reach level for designation as “analogous to slavery.”<sup>23</sup>

On April 3rd, 2013, for example, after being tipped off by a hotline call, an inspection team moved onto the facilities of “Confesta Alimentos Ltda,” a bread making company, to verify whether eight Haitians there were being subjected to debilitating workdays and whether their freedom of movement was being constrained. It had been charged that they were living in precarious lodgings and suffering from deprivation of food. It turned out that the company had forty-four employees, seven of whom were indeed Haitians. The inspectors identified improper extensions of the length of the workday, and a breach of the eleven-hour minimum interval between the workdays. They also found that the workers did not have access to a locker room, that there was no cafeteria, and that the sanitary facilities did not have showers. The inspection team

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<sup>23</sup> Inspections can be triggered in various ways, including information shared with the authorities through a hotline referred to as Disque 100 (“Dial 100”), by administrative complaints made by victims who have fled work sites, by denunciations made by labor unions, or as part of a “plan of action” strategically prepared by the labor inspection teams themselves.

issued twelve notifications for breach of labor law regulations. However, they did not rule that the workers had been subjected to “debilitating workdays,” which could trigger a finding of a condition “analogous to that of a slave.” The administrative violations that had been identified were deemed relatively minor, and “the bad conditions of lodging do not constitute degrading conditions of labor, but mere administrative irregularities.” Importantly, the workers were found to have their papers in order, so the contracts were properly documented.<sup>24</sup>

The formal regularity of the labor contracts seems to have influenced the inspectors’ reluctance to characterize the conditions of labor as analogous to slavery, though such a finding is in theory possible even when the Labor Cards are in order. The existence of properly documented contracts could nonetheless inhibit any effort to “rescue” the workers, a procedure that usually entails administrative cancellation of the labor contracts for a fault on the part of the employer. On a different inspection visit at another site, for example, the team concluded that sixty-two workers were indeed being subjected to “debilitating workdays”—normally an index of slave labor—but they only “rescued” seven of them. All of the others had regular labor contracts, registered in their booklets before the operation took place, and they apparently decided to remain working on the property.<sup>25</sup>

Another report, this one from July of 2012, suggests the kind of arguments

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<sup>24</sup> “Relatório de Fiscalização. Confesta Alimentos Ltda. ME,” archived as Op. 110/2013. DADESL/MLSS, Brazil.

<sup>25</sup> “Relatório de Fiscalização. Brasil Kirin Logística e Distribuição Ltda,” archived as Op. 132/2012. DADESL/MLSS, Brazil.

characteristically employed to support a conclusion that there has been no “reduction” of workers to a condition analogous to that of slave. The Ministry of Labor sent a team to inspect White Martins Gases Industriais Ltda, a charcoal company which was allegedly outsourcing activities to another five companies, in violation of labor law standards (according to Brazilian law, a company may not outsource its primary activities [*atividades-fim*]). The inspection team considered the situation to be one of “illegal outsourcing,” and declared all the one-hundred-eighty-nine workers (who had been hired by the sub-contractors to carry out charcoal production) to be in fact employees of White Martins. Some of them did not have formal contracts and others did not have Labor Cards at all.<sup>26</sup>

Charcoal production is widely recognized to be an activity that can be physically debilitating.<sup>27</sup> It requires the worker to toil under extremely high temperatures, amidst smoke and soot, in order to monitor and control the wood burning process. It is common for inspections in charcoal industries to come across circumstances judged to amount to the subjection of workers to debilitating workdays and degrading conditions of labor. However, that was not the judgment made at White Martins. The inspection team noted the absence of sanitary facilities at the work sites; there was no shelter from the weather during the workers’ meals; one of the buildings

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<sup>26</sup> “Relatório de Fiscalização. White Martins Gases Industriais Ltda – Fazenda São Mateus,” archived as Op. 47/2012. DADESL/MLSS, Brazil.

<sup>27</sup> In addition to the White Martins case file, we examined the Casamassima Indústria file, Op. 79/2006. DADESL/MLSS; and Fazenda Córrego da Saudade, Op. 151/2008, Pt. 1, DADESL/MLSS; which also involved charcoal production.

allocated to lodging was uninhabitable; and personal protective equipment was not made available to the workers on regular basis. However, the inspectors noted that toilets were available in the two-table refectory where the workers had their meals. Although the facilities did not meet the legal requirements, the situation was deemed not to be one of complete disregard for norms on the part of the company. There were six concrete barracks with cement floors, provided with beds and hanging lockers, to serve as lodging. The barracks were overcrowded, but in far better condition than the building that was condemned (which was occupied by a small number of workers). Personal protective equipment was furnished to the workers, although the company did not oversee its mandatory use, and some of the protective material was damaged, while other materials failed to meet the legal specifications—something the inspectors considered particularly grave.

All things considered, the team reported that they “did not find, in this inspection, workers subjected to labor in conditions analogous to slavery.” However, they asserted that “the situation described amounts to a ‘precarization’ of work conditions and work environment, demonstrated by the violation of several rules governing labor health and security.” The same expression—‘precarization’, implying a particular fragility or vulnerability in the work relation—appears in other reports that rule out a finding of conditions analogous to slavery. It may be that the inspectors were evoking this term to suggest conditions that might tip into those “analogous to slavery,” but that for the moment they deemed not to have that character. (Further interviews with labor inspectors themselves may help to illuminate the precise meaning of this term

‘precarization,’ itself something of a neologism in English, though its cognates in French and Portuguese have become familiar.) Perhaps uncertain of the prospects of gaining conviction in labor court when the employers appeared at least to have attempted to bring conditions up to code, the inspectors may have been inventing an intermediate category, located somewhere between familiar fines for mere labor law violations and the heavy artillery of a charge of subjection to labor in conditions analogous to slavery.

As employers’ strategies change, the inspection process itself can become somewhat mismatched to the conditions at hand. The exposure of the egregiously exploitative farmer Juciel Dias Correa with which we opened this essay can thus be contrasted with the repeated, laborious, and inconclusive inspections carried out in 2009 of a large operation called LDC Bioenergia, S.A.<sup>28</sup> This inspection dealt with a total of 286 workers on the six separate mechanized cane farms of the company, located near the city of Lagoa da Prata, Minas Gerais. The trigger had been the repeated denunciation of the company for what had relatively recently come to be characterized as *terceirização ilícita*, a form of unlawful sub-contracting. (The term *terceirização*, invented by a lawyer for a different company to rename and reframe the previously unlawful practice of masking company employees as laborers for a sub-contractor, has its own complex legal history,

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<sup>28</sup> This description draws on the case file LDC Bioenergia S.A., which documents the visits carried out between 9 and 20 November, 2009, and is filed as Op. 153/2009, DADESL/MLSS, Brazil.

with several conflicting decisions from the highest labor court on its permissibility.<sup>29</sup>) The inspectors at LDC Bioenergia were thus not exactly looking for evidence of slave labor, but they were trying to find some way to intervene and allocate responsibility for what were classically bad labor conditions.

It was the Public Ministry of Labor that had contacted the Ministry of Labor and Employment to initiate an inspection by a mobile team. The team assembled was large: seven inspectors, two prosecutors, and three agents of the Federal Police. Once on the farms, they found that the workers in transport, in the application of herbicides and fertilizer, and in maintenance, were formally employed not by the company but by subcontractors. After a close examination of the chain of production, the report insisted that these workers were in fact integral to the manufacture of sugar and alcohol that was the core function of the company, and the company should be responsible for compliance with labor norms. The contract workers were, the inspectors argued, in a “precarious” situation, with “pernicious” consequences, exposing them to imminent and serious risks. There had already been two fatal accidents. Drinking water and hygienic facilities were inadequate, and workers had to eat their meals in the field, exposed to sun and rain.

When the time came to enumerate the violations of the labor code, however, the inspectors chose their words carefully. The conditions, they reported, were *no limiar da degradância*, at the

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<sup>29</sup> See Magda Barros Biaveschi, “Justiça de Trabalho e Terceirização: Um estudo a partir dos processos judiciais,” in Ângela de Castro Gomes and Fernando Teixeira da Silva, organizers, *A Justiça do Trabalho e sua história. Os direitos dos trabalhadores no Brasil* (Campinas: Editora Unicamp, 2013) 447 - 480.

border of degradation. The conclusion expressed particular indignation that a company that was part of a well-funded multinational corporation would subject workers to such threats to their physical integrity and lives, “quite close to undermining even human dignity” (“bastante próxima de atingir inclusive a dignidade humana”). Although there is little way to be certain of the inspectors’ precise intent, this language seems to signal either a compromise between harsher and more accommodating previous drafts of the report, or a willingness to issue one last warning before accusing a large company of “slave labor,” with the publicity, legal resistance, appeals, and political pressure that such a charge might unleash.

At the same time, it may be that the bad conditions associated with the use of shell or shadow sub-contractors could perhaps not be shown to have been *imposed* by the primary company. The question of demonstrating both responsibility and the imposition of constraint has increasingly become entangled with the use of third-party contracts—a practice whose legality has varied over the years. In the case of the cane farms, the workers seem to have been more or less paid on time, and there were no charges of threats or limits on mobility. Instead, the final citations were for multiple violations of specific labor laws, which when compounded created severe risks to health. It seems that the filthy water and unprotected work sites did indeed evoke what was in other settings treated as “degrading,” but either the relative formality of the work relations, or some uncertainty about the allocation of responsibility, seems to have held the inspectors back from making the more serious charge.

The reference in the report to human dignity is particularly telling. Although Article 149 of



Brazil's Penal Code provides the underlying legal framework for defining labor in conditions analogous to slavery, the guidelines drafted by the Ministry of Labor and Employment distinguish between the criminal law definition and a related but distinct "administrative concept of slave labor." The manual for inspectors argues that Brazil's international treaty obligations and human rights commitments impose a responsibility to suppress abusive labor practices, above and beyond those for which there is the full evidence that would be required for an individual criminal prosecution. The concept of "degrading conditions," broadly interpreted, thus opens the possibility for a civil case to be made based on the circumstances of labor and the risks that they entail to the workers' health and safety, rather than on unlawful retention or physical intimidation of the workers. The connecting thread, on this view, is the concept of human dignity, in which the imposition of degrading working conditions is seen as a threat to that dignity.<sup>30</sup>

Similarly, the (stunningly hard to parse) guidelines provided to prosecutors with the Public Ministry of Labor by the National Coordinating Body for the Eradication of Slave Labor (CONAETE) describe as degrading conditions "those which constitute disrespect for the dignity of persons through the failure to comply with the fundamental rights of workers, particularly with reference to hygiene, health, security, lodging, rest, and food, or others related to rights of personhood, deriving from a situation of subjection which, for whatever reason, renders the

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<sup>30</sup> In November of 2011, a comprehensive set of guidelines for inspectors was issued by the Ministry of Labor and Employment. Ministério do Trabalho e Emprego, *Manual de combate ao trabalho em condições análogas às de escravo* (Brasília, 2011). The term *dignidade* appears repeatedly in that text.

consent of the worker irrelevant.” Labor in conditions analogous to slavery is then characterized as a “violation of human dignity and of the moral and ethical inheritance of society, entailing both individual and collective moral damages.”<sup>31</sup>

Inspectors on the mobile teams seem to be conscious of the divergence between their work and the work of a police investigation that might take place after some other kind of crime. Initially they may measure the height of barracks, photograph the inadequate sanitary facilities, and interrogate the workers about the provision of wages. Once persuaded that the conditions have reached the threshold for the designation “slave labor,” however, inspectors may then turn their *relatórios* into arguments, explaining the how and why of the “indignity” that they have witnessed. The case files thus become, in effect, hybrids: cool internal records of infractions for the purpose of administrative enforcement, and intentionally affect-laden testimony about the human implications of what is being recorded. Such reports provide not just a portrait of conditions, but a kind of dialogue and argument that seeks to convince the eventual reader that an offense damaging to the entire community has occurred.

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<sup>31</sup> “Condições degradantes de trabalho são as que configuram desprezo à dignidade da pessoa humana, pelo descumprimento dos direitos fundamentais do trabalhador, em especial os referentes a higiene, saúde, segurança, moradia, repouso, alimentação ou outros relacionados a direitos da personalidade, decorrentes de situação de sujeição que, por qualquer razão, torne irrelevante a vontade do trabalhador.” Orientação 04, and “Violação à dignidade da pessoa humana e ao patrimônio ético-moral da sociedade, ensejando danos morais individuais e coletivos... .” from Orientação 05, CONAETE, courtesy of colleagues in the Ministry of Public Labor.

As we have examined these archived texts, it has also become clear to us that they were written to be read as public documents, available for consumption by the press and prosecutors, not just as the record of a completed bureaucratic task.<sup>32</sup> Indeed, communications officers within the two ministries (the MTE and the MPT) have worked with journalists to call attention to cases, particularly after conviction by the labor courts. Each inspection, trial, and conviction can thus become part of an effort to shape public perception, and to send signals to other potential violators.<sup>33</sup>

If the application of the term “slavery” to modern circumstances can be a delicate matter, it is at the same time catnip for journalists, who quickly see the appeal of an article built on an

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<sup>32</sup> Our research focuses on the cases compiled by the MTE. A parallel body of Public Ministry of Labor (MPT) case files from the 15th region (comprising much of the state of São Paulo) is being assembled and digitized by the faculty and staff associated with the Arquivo Edgard Leuenroth at the State University of Campinas, under the supervision of Prof. Sílvia Lara of the Department of History. [http://www.ael.ifch.unicamp.br/site\\_ael/](http://www.ael.ifch.unicamp.br/site_ael/). In the case of the *relatórios* from the Public Ministry of Labor, the dossiers may include newspaper clippings and press reports that triggered an inspection, thus folding into the report explicitly activist or journalistic writings.

<sup>33</sup> Examples of such coverage include the article in *Globo* titled “Empresa e condenada pagar R 5 Milhoes por suposto trabalho escravo,” 24 March 2015, and subsequently updated: <http://g1.globo.com/mg/sul-de-minas/noticia/2015/03/empresa-e-condenada-pagar-r-5-milhoes-por-suposto-trabalho-escravo.html>. See also the reporting on a dramatic case from the *fazenda* Estrela Dalva in which a worker was unpaid for six years, “Fazendeiro é condenado por manter caseiro em situação de quase escravidão no Vale do Rio Doce,” *R7*, 30 May 2014: <http://noticias.r7.com/minas-gerais/fazendeiro-e-condenado-por-manter-caseiro-em-situacao-de-quase-escravidao-no-vale-do-rio-doce-30052014>. The press also picked up this story of a large “rescue”: <http://g1.globo.com/mg/sul-de-minas/noticia/2015/08/mpt-encontra-60-trabalhadores-em-situacao-analoga-escravidao-em-mg.html>

official report of “slave labor,” particularly on the farm of an elected official, at the building site of a major construction firm, or in a government-funded airport expansion.<sup>34</sup> Indeed, shaming employers through the press, or through inclusion on the official “dirty list” of confirmed violators of the law, is part of the larger strategy of the fight against slave labor—to the fury of the companies thus discredited.<sup>35</sup>

The shaming technique can nonetheless bring devastating backlash. After a major construction company was cited on five different occasions over four years for employing slave labor, the trade association of builders (the Associação Brasileira de Incorporadoras Imobiliárias)—whose president owned the construction company in question—responded with a suit to the federal Supreme Court charging that the government’s “dirty list” was itself unconstitutional. The suit succeeded in obtaining the suspension of official publication of the list, in part on the grounds that stigmatization of this kind, even if based on a final administrative finding, was a violation of due process. After their victory, the Association of Builders insisted that it remained “absolutely opposed to the use of labor in conditions analogous to slavery” and that it would continue to exert itself to “eliminate” the practice “in all sectors of Brazilian

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<sup>34</sup> See for example, the 2012 case in which senator João Ribeiro was accused of employing labor in conditions analogous to those of a slave: <http://congressoemfoco.uol.com.br/noticias/supremo-transforma-senador-em-reu-por-trabalho-es-cravo/> .

<sup>35</sup> Companies could be placed on the *lista suja* (dirty list) after the completed finding (and after any administrative appeal of the finding) of *trabalho escravo*.

society.”<sup>36</sup>

These rhetorical and political battles take place in a context in which everyone seems to be aware that a public renunciation and denunciation of labor in conditions analogous to slavery is obligatory. The struggle thus shifts to the question of whether the designation is actually appropriate in any given instance. In the aftermath of the 2003 change in the national Penal Code, labor inspectors picked up the cue, often using the descriptor “degrading conditions,” which they could now cite to the Penal Code. This usage, in turn, made it easier to specify both the empirical grounds and the dignitary component of the charge. The move away from using the term “force,” however, raised potential inconsistencies with the presence in the statute itself of verbs connoting the imposition of the will of the employer over the worker.<sup>37</sup>

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<sup>36</sup> The construction firm is called MRV, and has been the subject of charges in several states. See “Relatório de Fiscalização. MRV Engenharia e Participações S.A.,” archived as Op. 12/2011. DADESL/MLSS, Brazil; “Relatório de Fiscalização. MRV Engenharia e Participações S.A.,” archived as Op. 36/2011. DADESL/MLSS, Brazil; “Relatório de Fiscalização. MRV Engenharia e Participações S.A.,” archived as Op. 170/2011. DADESL/MLSS, Brazil; “Relatório de Fiscalização. MRV Engenharia e Participações S.A.,” archived as Op. 28/2013. DADESL/MLSS, Brazil; “Relatório de Fiscalização. MRV-MRL,” archived as Op. 118/2014. DADESL/MLSS, Brazil; “Relatório de Fiscalização. MRV Engenharia e Participações S.A.,” archived as Op. 077/2014. ADESL/MLSS, Brazil. (In the final case, the inspection team did not find slave labor.) The quotation from the association (“... veementemente contra o trabalho em condições análogas à escravidão, e continuará envidando todos os seus esforços para sua eliminação completa em todos os setores da sociedade brasileira”) can be found at: <http://agenciabrasil.ebc.com.br/direitos-humanos/noticia/2015-01/proibir-lista-suja-do-trabalho-e-scravo-enfraquece-combate-dizem>.

<sup>37</sup> On the early years of the “mobile groups,” see the interview with Ruth Vilela in Gomes, *Ministério do Trabalho*, 211 - 233. For an example of a 2008 case in which the inspectors seem to have used the concept of human dignity without the word itself, see Fazenda Santa Mônica, Op. 46/2008, DADESL/MLSS, in which they refer to an “ambiente totalmente

Even though they do not accept the argument by some conservatives that the term slavery is only appropriate if there is “absolute subjection,” the inspectors’ problem of conceptualizing and demonstrating constraint thus remains. The guidelines for labor prosecutors (reproduced in the appendix to this paper) refer to harms “deriving from a situation of subjection which, for whatever reason, renders the consent of the worker irrelevant.” This reference to subjection seems aimed at setting aside any simple understanding of “consent” by the worker that might shift responsibility away from the employer. But by reintroducing the idea of subjection the guidelines circle back to the language of Article 149 of the Penal Code, with its reference to *subjecting* workers to degrading conditions. Thus although the term “degrading” can quite properly be evoked by photographs of dirty toilets and contaminated kitchen facilities, the simple physical demonstration of appalling conditions does not quite capture “subjection”; that task falls to the inspectors who narrate the report.

## Conclusion and Epilogue

Increasingly, both the inspections themselves and any analysis of the reports operate in the shadow of a campaign of counter-attacks from landholders and their legislative allies.<sup>38</sup> Moreover, the very seriousness of the inspections—which can involve long journeys, very substantial man- and woman-power, and hours of labor invested in compiling reports and organizing negotiations

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impróprio ao ser humano” (a setting altogether inappropriate for a human being).

<sup>38</sup> See Leonardo Barbosa, “Behind the Definition of Contemporary Slavery in Brazil.”

or prosecutions—reveals the cost to the state of this undertaking. In a time of sharp budget deficits, it is thus not surprising that the national mobile teams had by late 2015 been reduced from nine to four. (Minas Gerais has at the same time risen to the top of the list of states in the incidence of slave labor, which may in part be an artifact of its surviving well-organized and committed mobile team.) We can expect the total number of inspections nationwide to begin to fall accordingly, and to show an increasing geographic skew.

Inspectors and labor prosecutors are to some extent now on their own—and vulnerable—as they try to discern the circumstances and degree of degradation that might push the labor violations over the line into a threat to human dignity. In the case of the 2008 visit to a large complex of sugar farms, for example, the inspectors reached for the idea of conditions that were “liminal”—approaching, almost but not quite, the level of an assault on human dignity. As with the introduction of the term “precarization,” it is difficult to figure out whether it is the conditions themselves that create this uncertainty, or the continuing wrangle over how and whether courts should uphold charges that use the language of “degrading conditions.”

This brings us back to the core question underlying our inquiry. How is the broad analogy that was introduced to the Brazilian penal code decades ago, prohibiting the imposition of labor in a condition like that of a slave, discerned by contemporary labor inspectors?

The answer may lie in the different levels at which different kinds of concepts operate. The term ‘slavery,’ in this context, does not refer either to property rights in persons or to the international law definition of slavery as the exercise over a person of “any or all of the powers

attaching to the rights of ownership.”<sup>39</sup> It provides instead a specific normative concept, that of behaviors that are no longer permissible as between employer and worker, for they reproduce elements of what was once imposed by masters upon slaves. It is by labeling such behaviors as harms to human dignity that the Brazilian campaign against slave labor gains part of its constitutional warrant. But this level of abstraction in turn poses a practical and conceptual problem for the inspectors.

In keeping with the general legal principle that conduct must be specified if it is to be made illegal, much of labor law is composed of rules and corresponding infractions, each with a range of possible penalties. Ordinary judgments can thus be seen as scalar and cumulative. To use the phrase “slave labor,” however, is to break away from those scalar judgments. *Trabalho escravo* is not just one more infraction to be added after many others have been enumerated. It carries an extra weight of moral opprobrium, and requires a yes/no judgment.<sup>40</sup>

The 2003 revisions of the penal code offered two criteria that could be closely tied to direct observation: the imposition of debt, and the constraint on movement or departure. More important, it offered two criteria that could function as intermediate concepts, combining

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<sup>39</sup> On the definition in international law, see Jean Allain, ed., *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford: Oxford University Press, 2012).

<sup>40</sup> Those who are accused of having imposed slave labor are well aware of this moral opprobrium. Senator João Ribeiro, whose case went all the way to the federal Supreme Court, said plaintively “É muito forte dizer que um cidadão está escravizando alguém.” See Edson Sardinha, “Supremo transforma senador em réu por trabalho escravo,” <http://www.brasildefato.com.br/node/8896>



observation with normative judgment: debilitating work rhythms, and degrading work conditions.

The idea of debilitating work days, which may be rooted in a medical literature on fatigue and health, does not loom very large in the reports that we have reviewed so far. Instead, the most important component of post-2003 cases seems to be the idea of “degrading conditions.” Publicity about cases built on such charges has indeed helped to change the popular image of the phenomenon of slave labor to incorporate what are by now familiar photographs of filthy water drawn from a cattle trough, or black plastic stretched across wooden poles in lieu of lodging. The risks to health from dirty water and pesticides, and the humiliation associated with a lack of toilet facilities, have given the normative term ‘degrading’ an observational component. Instead of a stark tension between the subjective and the objective, there has emerged an intermediate conceptual framework within which ground-level evidence can be assembled.

The tensions and uncertainties that surround this issue may also have a final affective component that derives from the use of the word ‘slave’, whether as adjective or noun. The law invokes by analogy a deeply shameful colonial and national past of slavery, an institution in which the Brazilian state was entirely complicit. But the analogy can become entangled with competing images of the historical as well as the contemporary circumstances. Although the older concept of slaves as property may look in retrospect like a clear-cut instance of “absolute subjection,” to use the phrase from Gilmar Mendes, historians have over the last several decades demonstrated the

mixture of subjection and agency that lay within even that terrible historical institution. It is thus perhaps only fitting that labor inspectors and prosecutors would find themselves faced with challenges when they seek to reason by analogy with a complex past.

### **Note on sources**

The full digital files of these *relatórios* held in their archives have graciously been made available to the authors for the purposes of the present research. It is our understanding that these are public documents, although they are not easily accessible to the public. We have used the names of employers when they appear on the title of the report, and are thus already subject to inclusion in public compilations and summary reports. Out of respect for the privacy of individuals, however, we refer to managerial personnel only by first name or nickname, and we do not use the names of individual workers whose testimony and personal data are often included in the reports. They themselves were not the targets of the investigations, nor did they give any consent for their stories to be repeated.

We have focused our attention on reports from the state of Minas Gerais, both because of its importance and because of the specific legal experience of two of the authors. (Leonardo Barbosa attended law school there and worked for several years in the office of human rights of the state; Carlos Haddad sits on the federal bench there and teaches in the law school of the Federal University of Minas Gerais.) Our system for citing the files is based on the titles on the cover page, and the internal system of classification used for the reports, which were archived by date and the number of the operation, e.g. Op. 014/ 2004.